

**Introduced by Senator Florez**

July 1, 2003

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Senate Joint Resolution No. 20—Relative to regulation of financial institutions.

**LEGISLATIVE COUNSEL'S DIGEST**

SJR 20, as introduced, Florez. Regulation of financial institutions.

This measure would request the Congress of the United States to hold hearings to explore and study the growing scope of federal preemption of regulation of financial institutions and the effects on American consumers and the 75% of the banks in the United States that are state chartered banks, and if necessary, to consider legislation that will prevent the unilateral expansion of jurisdiction over financial institutions by federal regulators without the specific endorsement of the United States Congress.

Fiscal committee: no.

- 1 WHEREAS, The Senate and Assembly Banking Committees of
- 2 the California Legislature recently held an informational hearing
- 3 on the doctrine of federal preemption of state laws and the impact
- 4 on California and its financial regulators; and
- 5 WHEREAS, The California Constitution provides that an
- 6 administrative agency of the state has no authority to declare a state
- 7 law unenforceable unless an appellate court determines that the
- 8 statute is prohibited by federal laws or regulations; and
- 9 WHEREAS, There are two areas where tension exists between
- 10 federal and state law in the fields of regulation of financial
- 11 institutions, which are the areas relating to the jurisdiction over the



1 operating subsidiaries of national banks and consumer protection;  
2 and

3 WHEREAS, Operating subsidiaries of national banks engage in  
4 various financial services such as mortgages, insurance, and  
5 securities-brokerage services that are beyond the scope of the  
6 business of banking as originally conceived in the National Bank  
7 Act of 1864; and

8 WHEREAS, Operating subsidiaries of national banks are  
9 creatures of state law, not federal law, and are incorporated under  
10 state law and in the past have applied for licenses from state  
11 regulatory authorities to operate within California; and

12 WHEREAS, In August of 2001 the Office of the Comptroller  
13 of the Currency (OCC) promulgated a regulation that effectively  
14 stated that the OCC was the exclusive regulator of national banks  
15 and their operating subsidiaries and this regulation placed the OCC  
16 on a collision course with California regulators of financial  
17 institutions; and

18 WHEREAS, The OCC has appeared as amicus curiae in several  
19 recent federal court cases opposing consumer protection  
20 legislation that has been passed by the California Legislature, on  
21 the basis that the legislation interfered with the power of national  
22 banks and their operating subsidiaries to engage in the business of  
23 banking; and

24 WHEREAS, There has been a clear, consistent, and  
25 premeditated effort by the federal government, specifically on the  
26 part of the OCC, to exercise jurisdiction in financial regulation  
27 matters that were previously the jurisdictional domain of the  
28 states, and the exercise of the jurisdiction has been assisted by a  
29 complacent United States Congress and deferential court system;  
30 and

31 WHEREAS, Certain interpretations of law by the OCC and the  
32 Office of Thrift Supervision have prevented the application of  
33 state consumer protections to federally-chartered financial  
34 institutions, and frustrate the efforts of state regulators and  
35 legislators to extend these protections to all citizens; now,  
36 therefore, be it

37 *Resolved by the Senate and Assembly of the State of California,*  
38 *jointly,* That the Legislature of the State of California, recognizing  
39 that the authority to resolve these issues rests with the federal  
40 courts and the United States Congress, respectfully requests that



1 the United States Congress hold hearings to explore and study the  
2 growing scope of federal preemption of regulation of financial  
3 institutions and the effects on American consumers and the 75  
4 percent of the banks in the United States that are state chartered  
5 banks, and if necessary, consider legislation that will prevent the  
6 unilateral expansion of jurisdiction over financial institutions by  
7 federal regulators without the specific endorsement of the elected  
8 representatives of the United States Congress; and be it further  
9 *Resolved*, That the Secretary of the Senate transmit copies of  
10 this resolution to each Senator and Representative from California  
11 in the Congress of the United States, to the Office of the  
12 Comptroller of the Currency, and to the Office of Thrift  
13 Supervision.

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